

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Casey McCann	Team: Squad #14	CCRB Case #: 201902318	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 03/15/2019 8:00 PM	Location of Incident: West 42nd Street N/Q/R train subway station	Precinct: 14	18 Mo. SOL 9/15/2020	EO SOL 5/2/2021	
Date/Time CV Reported Fri, 03/15/2019 9:50 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 03/15/2019 9:50 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Kenneth Miller	04564	918005	TB M/TF
2. POF Samantha Humburg	21750	957691	TB M/TF
3. POM Taejin Bae	15974	957347	TB M/TF
4. POM Marcus Delgado	29360	930023	TB M/TF

Officer(s)	Allegation	Investigator Recommendation
A.POM Marcus Delgado	Abuse: Police Officer Marcus Delgado stopped § 87(2)(b)	
B.POM Taejin Bae	Abuse: Police Officer Taejin Bae stopped § 87(2)(b)	
C.POM Marcus Delgado	Abuse: Police Officer Marcus Delgado refused to provide his shield number to § 87(2)(b)	
D.POM Taejin Bae	Abuse: Police Officer Taejin Bae refused to provide his shield number to § 87(2)(b)	
E.POF Samantha Humburg	Abuse: Police Officer Samantha Humburg searched § 87(2)(b)	
F.POM Marcus Delgado	Abuse: Police Officer Marcus Delgado threatened to remove § 87(2)(b) to the hospital.	
G.SGT Kenneth Miller	Abuse: Sergeant Kenneth Miller forcibly removed § 87(2)(b) to the hospital.	
H.SGT Kenneth Miller	Abuse: Sergeant Kenneth Miller failed to provide § 87(2)(b) with a business card.	
I.POF Samantha Humburg	Abuse: Police Officer Samantha Humburg failed to provide § 87(2)(b) with a business card.	

Case Summary

On March 15, 2019, § 87(2)(b) filed this complaint via the CCRB's call processing system on behalf of herself and § 87(2)(b) whom she did not know prior to this incident.

On March 15, 2019, at approximately 8 p.m., § 87(2)(b) entered the N/Q/R subway station at West 42nd Street in Manhattan. Police Officer Marcus Delgado and Police Officer Taejin Bae, both of the Transit Borough Manhattan Task Force, stopped § 87(2)(b) (**Allegations A and B: Abuse of Authority**, § 87(2)(g) PO Delgado and PO Bae allegedly refused to provide § 87(2)(b) with their shield numbers (**Allegation C: Abuse of Authority**, § 87(2)(g) and **Allegation D: Abuse of Authority**, § 87(2)(g) Police Officer Samantha Humburg, also of the Transit Borough Manhattan Task Force, searched § 87(2)(b) (**Allegation E: Abuse of Authority**, § 87(2)(g) PO Delgado allegedly threatened to remove § 87(2)(b) to the hospital (**Allegation F: Abuse of Authority**, § 87(2)(g) Sergeant Kenneth Miller of the Transit Borough Manhattan Task Force forcibly removed § 87(2)(b) to the hospital and failed to provide her with a business card (**Allegations G and H: Abuse of Authority**, § 87(2)(g) PO Humburg failed to provide § 87(2)(b) with a business card (**Allegation I: Abuse of Authority**, § 87(2)(g).

Neither § 87(2)(b) nor § 87(2)(b) were arrested or summonsed during this incident. Cell phone video footage was obtained and will be discussed in further detail below.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Marcus Delgado stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Taejin Bae stopped § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Marcus Delgado refused to provide his shield number to § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Taejin Bae refused to provide his shield number to § 87(2)(b).

§ 87(2)(g). The investigation established the following facts:

On March 15, 2019, at approximately 8 p.m., § 87(2)(b) who had just left a work happy hour where she consumed alcohol, entered the N/Q/R subway station at West 42nd Street in Manhattan. § 87(2)(b) stepped over the turnstile without paying her fare and boarded a train. PO Delgado and PO Bae boarded the train and asked § 87(2)(b) to exit. When § 87(2)(b) exited the train, PO Delgado and PO Bae handcuffed § 87(2)(b) and brought her to the mezzanine level of the train station, where Sgt. Miller was standing. § 87(2)(b) became extremely upset and Sgt. Miller called for EMS. While the officers were waiting for EMS to arrive, a crowd began to form around § 87(2)(b) which included § 87(2)(b) and § 87(2)(b) EMTs § 87(2)(b) and § 87(2)(b) § 87(2)(b) arrived and transported § 87(2)(b) to § 87(2)(b) Hospital. § 87(2)(b) was discharged from § 87(2)(b) Hospital less than an hour later.

It is undisputed that § 87(2)(b) jumped the turnstile without paying the fare and that PO Delgado and PO Bae stopped her.

§ 87(2)(b) (BR 01) testified that after she jumped the turnstile, she boarded the subway car. PO Delgado and PO Bae boarded the train and ordered § 87(2)(b) off the train. § 87(2)(b) said, "Are you police? Show me your badge," but neither officer showed § 87(2)(b) their badges. § 87(2)(b) approached the officers and they grabbed both of her arms. PO Delgado and PO Bae immediately handcuffed § 87(2)(b) after she was off the train.

PO Delgado (BR 02) testified that he, PO Bae, and Sgt. Miller were working near the booth directly in front of the southbound turnstile to the N/R/W train at 40th Street and Broadway in Manhattan. PO Delgado looked through the vents of the booth and observed § 87(2)(b) jump the turnstile and board the train. PO Delgado and PO Bae exited the booth and walked to the platform to stop § 87(2)(b) PO Delgado ordered § 87(2)(b) off the train, but she refused. § 87(2)(b) never asked PO Delgado for his shield number and he never refused to provide it to her. PO Bae approached § 87(2)(b) on the train, grabbed her arm, and escorted her off the train.

§ 87(2)(b) began to scream and curse, but PO Delgado did not remember any particular statements she made. § 87(2)(b) started to move her arms, but after a few seconds, PO Delgado and PO Bae handcuffed § 87(2)(b).

Sgt. Miller (BR 03) testified that PO Bae informed him that he observed § 87(2)(b) jump the turnstile. Sgt. Miller remained at the mezzanine level while PO Delgado and PO Bae went down to the platform and could not see § 87(2)(b) or the officers. After approximately three minutes, Sgt. Miller heard § 87(2)(b) yelling and proceeded down to the platform, where PO Delgado and PO Bae were handcuffing § 87(2)(b).

PO Bae is on extended military leave until January 2021 and thus the investigation could not obtain a statement from him (BR 04).

No person shall use or enter upon the facilities or conveyances of the Authority, for any purpose, without the payment of the fare. New York City Transit Rules of Conduct 1050.4 (BR 05).

Where a police officer entertains a reasonable suspicion that a particular person has committed, is committing, or is about to commit a felony or misdemeanor, the Criminal Procedure Law (CPL) authorizes a forcible stop and detention of that person. People v. De Bour 40 N.Y.2d 210 (1976) (BR 06).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Samantha Humburg searched § 87(2)(b)

§ 87(2)(b) provided cell phone footage that she took while observing the officers and § 87(2)(b). The footage begins with § 87(2)(b) speaking with a uniformed officer about what was going on with § 87(2)(b). § 87(2)(b) is in the background of the footage, standing handcuffed near a wall. PO Humburg picks up § 87(2)(b)'s backpack and puts it down in front of § 87(2)(b). PO Humburg leans over, opens the main compartment of the bag, and enters it briefly. PO Humburg then stands back up and speaks with § 87(2)(b). The conversation is not audible (see time stamp on player <<00:00 – 00:41>>) (BR 07-08).

§ 87(2)(b) did not allege that an officer entered her bag. The undersigned attempted to contact § 87(2)(b) upon receipt of the video, but § 87(2)(b) did not return said calls.

PO Humburg (BR 09) testified that she responded to Sgt. Miller's radio transmission for an additional unit and upon her arrival, § 87(2)(b) was handcuffed and screaming. Sgt. Miller informed PO Humburg that § 87(2)(b) was going to be removed in an ambulance once EMTs arrived. PO Humburg stood with § 87(2)(b) who began "fidgeting" to get something out of her sweater pockets. PO Humburg went into § 87(2)(b)'s sweater and removed § 87(2)(b)'s identification from her sweater. PO Humburg also searched § 87(2)(b) as a matter of procedure to remove any weapons on § 87(2)(b)'s person before placing § 87(2)(b) in the ambulance, as "even individuals in handcuffs could harm themselves." However, PO Humburg did not believe § 87(2)(b) was at risk to potentially harm herself. PO Humburg reviewed the cell phone footage provided by § 87(2)(b) but could not identify herself as the officer searching § 87(2)(b)'s bag and did not recall doing so.

Sgt. Miller testified that after PO Delgado and PO Bae handcuffed § 87(2)(b) and began walking her up the stairs, he requested that a female officer respond to the location to calm

down § 87(2)(b) as she continued to yell. When PO Humburg arrived, she stood with § 87(2)(b). Sgt. Miller did not recall an officer entering § 87(2)(b)'s bag or frisk it before entering it. Sgt. Miller noted that it was possible that an officer entered the bag to ensure that § 87(2)(b) did not have anything in it that could harm herself or the EMTs or to obtain § 87(2)(b)'s identification or medical cards, but had no further recollection that this occurred in this incident. Sgt. Miller reviewed the video § 87(2)(b) took and confirmed that PO Humburg was the officer depicted entering § 87(2)(b)'s bag.

Where a sufficient basis or detention exists, an officer may conduct a patdown [*sic*] frisk as a routine safety measure preliminary to transporting a suspect. People v. Gamble 210 A.D.2d 903 (1994) (BR 10).

In the absence of particularized suspicion or any grounds on the part of the officer to fear for his safety or that of his fellow officers, the officer lacked any justification for searching the pocket of the defendant's pants. People v. § 87(2)(b) 277 A.D.2d 875 (2000) (BR 11).

When an emotionally disturbed person (EDP) has been restrained, remove property that is dangerous to life or will facilitate escape. Patrol Guide Procedure 221-13 (BR 12).

§ 87(2)(b), § 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Marcus Delgado threatened to remove § 87(2)(b) to the hospital.

§ 87(2)(b) (BR 13) testified that she saw three officers walking § 87(2)(b) down the platform as § 87(2)(b) yelled, "Stop!" The officers led § 87(2)(b) to the mezzanine level and § 87(2)(b) followed. A crowd began to gather, the size of which varied from six to 20 people. § 87(2)(b) began to speak with the other witnesses to gather their contact information. As she had her phone out, PO Delgado asked § 87(2)(b) "Do you need to go to the hospital, too? Your hands are shaking." § 87(2)(b) interpreted this statement as a threat to take her to the hospital.

§ 87(2)(b) and § 87(2)(b) (BR 14-15), who both provided telephone statements, said that they did not hear an officer threaten to take § 87(2)(b) to the hospital.

PO Delgado testified that § 87(2)(b) stuck out to him as a member of the crowd because she was an older woman and was standing closest to PO Delgado. § 87(2)(b) asked PO Delgado for his shield number, which he provided. § 87(2)(b) hand was shaking, though PO Delgado did not recall which one, and he asked § 87(2)(b) if she needed medical attention due to her shaking hand. PO Delgado did not recall how § 87(2)(b) responded to his question.

Sgt. Miller and PO Humburg provided consistent testimony that they did not hear an officer ask § 87(2)(b) if she needed to go to the hospital or see her hands shaking, as their attention was on § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

Allegation (G) Abuse of Authority: Sergeant Kenneth Miller forcibly removed § 87(2)(b) to the hospital.

It is undisputed that § 87(2)(b) was forcibly removed to § 87(2)(b) Hospital and had consumed alcohol prior to this incident.

§ 87(2)(b) testified that she had two beers at a work-sponsored happy hour and did not use any other drugs or substances prior to this incident. After she was handcuffed, § 87(2)(b) described that she was hysterically crying and felt like she was going to have a panic attack, but did

not make any statements about potentially having a panic attack to the officers.

§ 87(2)(b) and § 87(2)(b) testified that it was possible § 87(2)(b) was intoxicated, due to her agitated and “frantic” demeanor during the incident, but neither witnessed § 87(2)(b) slur her words or have trouble standing.

During her telephone statement, § 87(2)(b) said that § 87(2)(b) was not intoxicated.

Sgt. Miller and PO Delgado provided consistent testimony that § 87(2)(b) had a plastic cup filled with alcohol in her hand prior to being handcuffed. The officers knew that the liquid was alcohol due to its odor. The officers also both smelled alcohol emanating from § 87(2)(b)'s breath.

Sgt. Miller testified that other than § 87(2)(b) smelling of alcohol, he had no other indications that § 87(2)(b) was intoxicated, as she was not swaying or unable to stand. However, because she was intoxicated, Sgt. Miller deemed that § 87(2)(b) could not care for herself and therefore was an emotionally disturbed person (EDP). Sgt. Miller did not think § 87(2)(b) was a threat to herself or others, but because § 87(2)(b) was intoxicated, he did not want to summons or arrest her and therefore decided the best course of action would be to have § 87(2)(b) “checked out” at the hospital and to “forget about” the transit violation. Approximately 30 minutes later, EMTs arrived, but Sgt. Miller did not see the EMTs evaluate § 87(2)(b) nor did the EMTs tell Sgt. Miller that they concurred that § 87(2)(b) needed to go to the hospital.

PO Humburg testified that upon her arrival, Sgt. Miller informed her that § 87(2)(b) was to be removed in an ambulance once EMTs arrived. Similarly, PO Delgado testified that Sgt. Miller made the decision that § 87(2)(b) needed to go to the hospital.

Neither EMT § 87(2)(b) (BR 16) nor EMT § 87(2)(b) (BR 17) had independent recollections of this incident. However, EMT § 87(2)(b) testified that he has never taken a patient to the hospital if he “feels like [the patient] is okay.” Both EMT § 87(2)(b) and EMT § 87(2)(b) testified that EMTs are responsible for deciding whether a patient needs to be removed from the hospital.

An officer must take into protective custody, and have removed to the hospital in an ambulance, any person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others. NYPD Patrol Guide Procedure 221-13.

§ 87(2)(b), § 87(2)(g)

Allegation (H) Abuse of Authority: Sergeant Kenneth Miller failed to provide § 87(2)(b) with a business card.

Allegation (I) Abuse of Authority: Police Officer Samantha Humburg failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) testified that she was not summonsed during the incident and never received a business card.

Sgt. Miller testified that he provided his badge number and identification to § 87(2)(b) at § 87(2)(b) Hospital, but had no knowledge of a business card being provided to her. PO Humburg did not recall if a business card was provided to § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Officers are required to offer a business card to a person at the conclusion of a law

enforcement activity, including pedestrian stops where an officer has a reasonable suspicion that the person stop has committed, is committing, or is about to commit a crime, and searches of persons, when the activity does not result in an arrest or summons. New York City Administrative Code § 14-174 (BR 18).

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) and § 87(2)(b) have been a party (BR 19-20).
- Sgt. Miller has been a member of service for 23 years and this is the first CCRB complaint to which he has been a subject.
- PO Delgado has been a member of service for 17 years and has been a subject in four CCRB cases and 11 allegations, none of which was substantiated. § 87(2)(g)
- PO Bae has been a member of service for five years and this is the first CCRB complaint to which he has been a subject.
- PO Humburg has been a member of service for five years and has been a subject in one prior CCRB case, which is pending Board review.

Mediation, Civil and Criminal Histories

- § 87(2)(b) and § 87(2)(b) declined to mediate this complaint.
- As of November 19, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (BR 21).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (BR 22).
- According to OCA, § 87(2)(b) has no history of convictions in New York City (BR 23).

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date